

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington, NC**  
**July 8, 2014**

**Members Present**

**City:**

Mr. Mike Gee, Acting Chairman  
Mrs. Joyce Lance  
Mr. Eric Grant  
Mr. Robert Giles

**Members Absent**

Mr. Ed Wilson  
Mr. Todd Smith  
Mr. David McDevitt

**ETJ:**

Mrs. Sylvia Greeson

Also present was Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Acting Chairman Mike Gee called the meeting of the Board of Adjustment to order at 8:30 a.m. Mr. Wilson stated the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the Board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupt, disturb, or disrupt to leave; failure to comply with this order is punishable by imprisonment up to 6 months, a fine of \$250.00 or both. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to approve a special use permit or to decide an appeal.

**DUE PUBLICATION**

Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington, stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting.

**SWORN TESTIMONY**

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

**MEETING MINUTES**

Acting Chairman Mr. Mike Gee stated, the first item of business for today is going to be the approval of the minutes from the June 10, 2014 meeting. Has everyone received their copy of the minutes? Are there any changes? Board Member Mrs. Sylvia Greeson stated, I have a number of typos that need to be corrected. None of them were substantial, just simply typos. Acting

Chairman Mr. Mike Gee stated, ok any other changes that anyone noted? Board Member Mr. Robert Giles stated, I'm going to sustain from voting since I wasn't here for the last meeting. Acting Chairman Mr. Mike Gee stated, would anyone like to make a motion to approve the minutes with the proposed changes? Board Member Mr. Eric Grant made a motion to approve the minutes as corrected. Board Member Mrs. Sylvia Greeson seconded the motion. The Board voted unanimously to approve the June 10, 2014 Meeting Minutes.

**ITEM NO. 1:**

**CASE NO. 07-14 – VARIANCE (CITY)**

**Maurice Jackson**

1903 Woodland Ave.

Alamance County Tax Map 12-22-49

§ Section 32.3.C.4

Rear yard setback requirements in R-15 district.

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case number 07-14 is for Maurice Jackson at 1903 Woodland Ave. He's asking for a Variance to the rear yard setback. He has a set of steps that are attached to the garage. There is a unit above the garage and he does have a permit to redo the garage and unit. He wants to move the steps inside the garage. However, what he would like to add in is a cantilever, or possible a straight beam pole, deck that would extend no further out than the steps do now which is 5ft from the house and to be placed in the same location as the steps. These stairs are old and he would like to replace them for safety reasons as well as the relocation of the new stairs being in the garage. Acting Chairman Mr. Mike Gee asked, just to clarify the proposed deck is going to be in the same foot print as the existing stairs? Zoning Enforcement Officer Mr. Chris Marland stated, correct. It will be right where those are located; it will be no further out than that landing which is 5ft. However, the landing for the new deck will be a bit longer but it will encompass where the actual steps are now.

Zoning Administrator Mr. Joey Lea stated, just so the Board will know the steps on the side have already been removed. As Chris just stated the reason for that is there is going to be a room upstairs and they didn't want exterior access so the access will now be on the inside. If you look at the configuration of the property and the configuration of the house, the house is already within the rear yard setback. On corner lots the narrow side is always the front so that makes this a rear setback of 25ft. Acting Chairman Mr. Mike Gee asked, so the configuration of the lot does propose a hardship for this request in your opinion? Zoning Administrator Mr. Joey Lea stated, yes in my opinion. Board Member Mrs. Sylvia Greeson asked, what is the distance going to be? You said we will need a 25ft setback, what would the distance be between the back of the line and the deck? Zoning Enforcement Officer Mr. Chris Marland stated, at this time we don't know exactly what that measurement is going to be. Mr. Jackson can testify a little more to that. We believe they have tried to find those property pins. He couldn't exactly find them, but remember how it will not extend any further than where it is now. Zoning Administrator Mr. Joey Lea stated, the request is going to be for no more than 5ft off the house just like it was before. Acting Chairman Mr. Mike Gee asked, if I understand correctly though the house as it sits is not in compliance with the rear yard setback? Zoning Administrator Mr. Joey Lea stated, that would be correct. The house was built in 1949 way before our Ordinance went into effect. Board Member Mrs. Sylvia Greeson asked, is it the house that's not in compliance or is it the garage that puts it into the setback area? Zoning Administrator Mr. Joey Lea stated, the garage is attached to the house. Board Member Mr. Eric Grant asked, have we had any comment from residents in the area? Zoning Enforcement Officer Mr. Chris Marland stated, yes I have received approximately 4 or 5 phone calls from residents in the area. Some wanted to know what the signs were about.

We put up Variance signs now if you remember. We explained to them what's going on. None of them had any problems with it, including the rear neighbor Miss McDermott at 1909 Woodland Ave. She actually called me twice.

Mr. Maurice Jackson stated, I own the property and as you can see on this exhibit the steps that were originally there were not in compliance. We purchased the property 5 years ago and they were actually not stable enough to even walk up. We had to remove them, we had no other option. I have a wife, a 4 year old and 5 year old twins. I didn't feel safe with them walking up the steps, let alone myself. We've already have a permit. We have refurbished the entire garage, the framing and the siding. So what we are trying to do is use the same footprint, we're not going any further.

We just wanted to put a balcony there. The intentions are to put a cantilever balcony based on the setbacks. If that doesn't suffice, or the price is too high to accommodate, then we will go with the traditional beam but our intention is to put a cantilever balcony there and to put the steps into the garage. Board Member Mrs. Joyce Lance asked, is this balcony to be decorative or functional? Mr. Maurice Jackson stated, functional. Board Member Mr. Eric Grant asked, what are you proposing as a size of this deck, 5 ft. out by what length? Mr. Maurice Jackson stated, the length is approximately 19 ft. Board Member Mr. Eric Grant asked, so the overall deck would be about 5 X 19 ft.? Mr. Maurice Jackson stated, 5 X 20 ft. to keep it simple. What you are getting is the same foot print as what you see here. Acting Chairman Mr. Mike Gee stated, so you can confirm the deck will meet the footprint that is noted on the survey provided by Boswell Surveyors? Mr. Maurice Jackson stated, yes sir. Board Member Mrs. Joyce Lance stated, I'm sure it's been explained to you that you are going to need to explain to us what the hardship is, that is the main thing really. How would you define the hardships for us? Mr. Maurice Jackson stated, there really is no other way to get to the room above the garage and that's approximately 650 sq. ft. That's a full kitchen, full bath there that we would have access to. We have no access right now. So we want to put the steps inside the garage so then no one can be in that room at any time without us knowing. Then put the same footprint there as a balcony. Board Member Mrs. Sylvia Greeson asked, but you are going to or already have relocated the steps to the inside of the garage? Mr. Maurice Jackson stated, no these are our intentions. We wanted to wait for the results of the Board. Board Member Mrs. Sylvia Greeson asked, ok without the balcony, will you still put the steps inside the garage? Mr. Maurice Jackson stated, for safety purposes that's what I plan on doing regardless, I have to. Board Member Mrs. Sylvia Greeson stated, I'm trying to understand how if we don't grant the variance and there is no balcony how we prevented you from accessing from the inside upper room if you put the steps inside. The interior steps are going to give you access to that room, correct? Mr. Maurice Jackson stated, we have to have an engineer to come out and make sure everything is approved then we can be accommodated the inside steps as well. I don't foresee that being an issue but I'm not an engineer. Board Member Mrs. Sylvia Greeson asked, I understand that we don't know exactly where the property line is but what is your approximate estimate of the distance between the existing steps or the foot print and your property line? Mr. Maurice Jackson stated, I would say it's comparable to what you see on the plan. I can't say that there's a huge deviation. Board Member Mrs. Sylvia Greeson asked, I mean do you have any idea what the footage is? We haven't been told whether it is 2 ft., 6 ft. or 30 ft. Mr. Maurice Jackson asked, from the steps to the property line? Board Member Mrs. Sylvia Greeson asked, what's your best guess on what that distance is? Mr. Maurice Jackson stated, from the steps I would say 15 ft. Zoning Administrator Mr. Joey Lea stated, I met with the applicant out on the property and we took some measurements. We estimated it to be about 10 ft. from where the steps were. Keep in mind that the steps were there to allow access to the upper portion of this garage. The proposed deck, although will not give them access, will still allow them to utilize the outside as they utilized it before. Once again, I think that the configuration of this house has a lot to do with this issue because if the situation was reversed that setback would be a side setback and it would only be

10 ft. If Woodland was a front setback then that would be a 10 ft. side setback as opposed to a 25 ft. rear. Logically it is within the scope of our ordinance and it's going to be up in the air opposed to down on the ground. Board Member Mrs. Joyce Lance asked, as far as the decision of this Board, the question I'm going to ask you is probably not relevant to the decision but it is relevant so that we understand your position. When did you buy the house? Mr. Maurice Jackson stated, we purchased the house in August 2009. Board Member Mrs. Joyce Lance asked did you have any idea that you would run into this dilemma and need a variance? Mr. Maurice Jackson stated, no. We had already pulled a permit and already had it inspected for the framing. We were waiting on the Inspector to show up. Again, we wanted to show the Inspector where everything was that's when we were informed we needed a variance. So through the process this is where we're at today. Board Member Mrs. Joyce Lance asked, it was the Building Inspector that brought it to your attention? Mr. Maurice Jackson stated, yes, we passed all of our inspections. Board Member Mrs. Sylvia Greeson asked, when you purchased the house 5 years ago, you were not aware of any plans to do this? Mr. Maurice Jackson stated, no I haven't occupied the residence yet because I've been on deployment. So we're in the process of occupying it. We wanted to make sure everything was finalized before we did that.

**DISCUSSION & FINDING OF FACTS:** Acting Chairman Mr. Mike Gee stated, I think that we do need to find the four items that have to be considered for granting a variance. The first one being an unnecessary hardship resulting in carrying out the strict application of the ordinance. There would be practical difficulties since the steps have already been taken down. I think the ordinance would be restrictive if we don't allow him to put this back in the same footprint the existing steps were in. Board Member Mrs. Joyce Lance stated, I agree. Acting Chairman Mr. Mike Gee stated, the hardship does result from contingences that are particular to the property; this has been testified to by the City staff. Board Member Mrs. Joyce Lance stated, I agree with you. The configuration of the lot is an issue. Board Member Mrs. Sylvia Greeson stated, if this was a side setback we wouldn't have a problem. Board Member Mrs. Joyce Lance stated, that's right. Board Member Mrs. Sylvia Greeson stated, it's the turning of the property that is the problem. Acting Chairman Mr. Mike Gee stated, yes I mean given that this is a corner lot, this has to be considered a rear-yard setback. If the house faces the front, off of Woodland, it would be in compliance as a side-yard setback. The third condition is the hardship did not result from actions taken by the property owner. As testified by the applicant he didn't purchase this property with knowledge of the setback issue that is here, so there was no intent to deceive. Board Member Mrs. Joyce Lance stated, he did not create the hardship. Acting Chairman Mr. Mike Gee stated, I think the requested variance is consistent with the spirit purpose and intent of what the ordinance ensures. Actually, I think the public safety is enhanced by what he is looking to do because you had an unsafe set of steps, an accident waiting to happen. The access from outside the house could also create safety issues to entrances on the property that the owners may not be aware of and I think this is consistent with the spirit. I would say if we decide to grant the variance that it would be stated that the variance is required to ensure that the deck is built per the existing footprint of the steps. Board Member Mrs. Joyce Lance stated, I believe that the applicant stated the deck will be 5 X 20 ft. and if that fits with the dimensions can we not state 5 X 20 ft. or less? Zoning Administrator Mr. Joey Lea stated, my suggestion would be definitely no more than 5ft. off the house. I would give an approximate on the length. I'm not sure he is 100% sure at this point exactly how long it's going to be. I would hate to come back with a 3inch variance. Board Member Mrs. Joyce Lance asked, alright but do you agree with the 5ft.? Zoning Administrator Mr. Joey Lea stated, yes. Board Member Mr. Eric Grant asked, the existing steps aren't 5 ft. wide are they? Zoning Administrator Mr. Joey Lea stated, the deck was 5 feet. Board Member Mr. Eric Grant stated, just the landing at the top is the only thing that is 5ft. So the

motion should cross reference the steps of the footprint. We should reference approximate size. Acting Chairman Mr. Mike Gee stated, right, not to exceed 5 feet.

**DECISION:** Acting Chairman Mr. Mike Gee stated, I would like to make a motion that a variance be granted for Maurice Jackson, a rear-yard setback located at 1903 Woodland Ave., Burlington, North Carolina to allow a balcony to be attached to the garage with the condition that the proposed balcony not project more than 5 feet beyond the house and that the length of the balcony be approximately 20 feet. variance The four required conclusions are based on the following finding of facts;

**Unnecessary hardship would result from carrying out the strict application of the ordinance. It shall not be necessary to demonstrate that in absence of the variance no reasonable use can be made of the property.**

This conclusion is based on the following finding of facts; I believe that again that this request would not be practical to restrict the granting of the variance because this property already had a staircase that was in this location. The house is non-compliant technically, this is due to the configuration of the lot and it would be restrictive to follow out the strict application of the ordinance.

**The hardship results from conditions that are peculiar to the property such as location, size or topography. Hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance.**

This conclusion is based on the following finding of facts as testified by the City Staff the configuration of the lot is a hardship for this property. The fact that it is a corner lot, with Edith Street is being determined to be the front of the property makes the boundary that we are considering the rear of the property. If the front of the house facing Woodland was considered the front, it would actually be a side-yard setback issue that we are looking at, and this is actually outside of the requirements for a side-yard setback.

**The hardship did not result from actions taken by applicant or by the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance, shall not be regarded as a self-created hardship.**

This conclusion is based on the following finding of fact, as testified by the applicant, he was unaware the setback issues when the property was purchased and he did not create this hardship.

**The requested variance is consistent with the spirit purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved.**

This conclusion is based on all of the findings of facts listed above as well as the following; I do believe that the requested variance is consistent with the spirit. I think that public safety is actually enhanced because this variance allows for, as testified, the stairway that is already there, could have been a safety hazard, to be removed and it also eliminates a potential outside access to the property that the property owner would not like to have.

Board Member Mrs. Joyce Lance seconded the motion. The Board voted unanimously to approve the variance.

**AYES: Lance, Giles, Gee, Grant, Greeson**

**NOES:**

**NEW BUSINESS:**

**MEETING ADJOURNED**

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Ed Wilson, Chairman

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Chris Marland, Secretary